



502 East 9th Street
Des Moines, Iowa 50319
www.ipib.iowa.gov

Keith Luchtel, JD
Executive Director
(515) 725-1782
keith.luchtel@iowa.gov

Margaret Johnson, JD
Deputy Director
(515) 725-1783
margaret.johnson@iowa.gov

RE: Formal complaint 14FC:0067, filed by Karen Roode and concerning the City of Low Moor, Iowa, City Council. Alleged violation of open meetings law for talking in the kitchen after meeting adjourned. Complaint dismissed.

August 28, 2014

Karen Roode
PO Box 115
Low Moor, IA 52757

BY EMAIL ONLY

Dear Ms. Roode:

On August 18, 2014, you filed this complaint with the Iowa Public Information Board (IPIB) alleging a violation of Iowa Code Chapter 21, the open meetings laws. You alleged:

Following the adjournment of a monthly council meeting on August 5, 2014, at approximately 8:30pm, the mayor (Tom Goldensoph) and three council members (Robin Marlowe, Brandi Smith Pray, Derek Hoenig) which constitute a majority of members went into a darkened kitchen in the Low Moor Community Center and began talking quietly which is in clear violation of the Iowa Code Chapter 21, Open Meetings law. I observed them for several minutes and then stated "you are violating the open meetings laws" to which one of the members, Brandi Pray Smith, quickly came out of the kitchen and stood beside me. When I again stated to her that this is a violation of open meetings law which could be reported, her response was "so maybe you should report it".

A copy of your complaint was forwarded to the mayor and the city clerk for the City of Low Moor, Iowa. Mayor Goldensoph provided a copy of the complaint to the council members. Mayor Goldensoph and Council member Pray contacted this office and provided a response. According to both accounts, various council members were in the kitchen area following the meeting to clean up from a 'meet and greet' held prior to the meeting. Council member Pray asked the Mayor what a 'leg' was, referring to a vote taken during the meeting when the Council discussed land needed by a grain elevator. The Mayor directed Council member Pray to the window in the kitchen, where the elevator in question and the 'leg' could be seen. Both also reported that others cleaning in the kitchen were not a part of this conversation. Both stated that no city business was discussed, and at no time was a

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitzl

quorum engaged in city business. There are five council members on the city council; quorum would be three of the five.

Council member Pray recalled the last sentence of your complaint as occurring in response to a statement you made that Chapter 21 prohibits public comments during a meeting.

Iowa Code Chapter 21 governs the proper conducting of open meetings. The definition of meeting is set forth in Section 21.2(2):

2. “Meeting” means a gathering in person or by electronic means, formal or informal, of a majority of the members of a governmental body where there is deliberation or action upon any matter within the scope of the governmental body’s policy-making duties. Meetings shall not include a gathering of members of a governmental body for purely ministerial or social purposes when there is no discussion of policy or no intent to avoid the purposes of this chapter.

As noted on the IPIB website, www.ipib.iowa.gov, under Frequently Asked Questions:

A wide range of activities could fall within the definition of “meeting.” Most of these gatherings are included in Chapter 21.2’s definition of “meeting.” An important exception is a gathering of less than a majority of members. If the notice, openness and record-keeping requirements of Chapter 21 were applied to such a gathering, it could limit free speech and association rights of public officials.

Chapter 21.2 does define a “meeting” of a majority of the members as excluding gatherings for purely social or ministerial purposes where there is no discussion of policy or no intent to avoid the purposes of the Act.

The definition of “meeting” permits the majority to gather for limited purposes without being subject to the requirements of the Act. A purely social gathering is placed outside the coverage of the statute to avoid a collision with the association rights of public officials under the First Amendment. Likewise, if a majority of the members of a governmental body is simply traveling together to a meeting, conference, etc., that activity would be outside the scope of Chapter 21 so long as there was no discussion of policy and there was no intent to avoid the purposes of the Act.

A gathering of a majority of members for purely ministerial purposes is excluded from the Act’s coverage because a ministerial matter by definition excludes exercising any discretion about policy matters. Clear examples are the members’ signing of letters or documents whose contents have been approved in a prior, formal open meeting or school board members attending graduation ceremonies.

Questions about “ministerial” functions and information-gathering trips by governmental bodies have been addressed in Attorney General’s opinions, including Cook to Pellett and Crabb, 79-5-14, Stork to Reis, 81-2-13, and Stork to O’Kane, 81-7-4.

The last opinion notes, “... It appears that gathering for ‘purely ministerial purposes’ may include a situation in which members of a governmental body gather simply to receive information upon a matter within the scope of the body’s policy making duties. ... We emphasize, however, that the nature of any such

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitl

gathering may change if either 'deliberation' or 'action' ... occurs. A 'meeting' may develop ... if a majority of the members of a body engage in any discussion that focuses at all concretely on matters over which they may exercise judgment or discretion."

In Dooley v. Johnson County Bd. of Sup'rs. (2008 WL 5234382), the Iowa Court of Appeals ruled that the board did not violate the open meetings law when members met privately with a consulting company to review a preliminary draft of a report, asked questions and elicited clarification. However, the Court noted, "Gathering for this purpose appears dangerously close to 'deliberation.' Even absent any intention to deliberate, such discussions could arise effortlessly. We believe the board's decision to review the draft in this fashion was a poor one."

The law provides latitude by exempting "ministerial" and "social" functions from coverage by Chapter 21, but plainly the latitude must be drawn narrowly to be consistent with Chapter 21's mandate for openness.

Following receipt of the comments by the Mayor and Council member, your witnesses were asked to provide a statement. One individual indicated that he observed people in the kitchen, but did not pay close attention to who was there or what was said. He did see the Mayor and Council member Pray. He confirms your statement that Pray responded as you noted.

The other individual was in the kitchen area after the meeting to get refreshments. She recalls seeing council members talking in the kitchen. She did not hear any of the conversation.

In order for a violation to be found in this matter, certain facts must be proven: 1. A majority of the members must be present; 2. Deliberation or action must occur concerning matters within the scope of the city's policy-making duties; and 3. It cannot be a social or ministerial function. Accounts vary as to whether all three council members were engaged in discussion together. Even if it could be determined that a majority of the Council members were engaged in a conversation, there is insufficient evidence to prove that there was deliberation or action of matters within the scope of the city's policy-making duties. Because this was part of a 'meet and greet' social event, and members were also tasked with the set up and clean-up of the event, it was more likely a social or ministerial function of the Council.

Pursuant to Iowa Administrative Code Rule 497-2.1(3), the IPIB has delegated acceptance or dismissal of complaints to the Executive Director. The decision of the Executive Director is subject to review by the Board.

Iowa Code Section 23.8 provides two options for action by the IPIB upon receipt of a complaint, the second of which states:

"Determine that, on its face, the complaint is outside its jurisdiction, is legally insufficient, is frivolous, is without merit, involves harmless error, or relates to a specific incident that has previously been finally disposed of on its merits by the board or a court. In such a case the board shall decline to accept the complaint. If the board refuses to accept a complaint, the board shall provide the complainant with a written order explaining its reasons for the action."

For the reasons set forth above, it is therefore ordered that the complaint is dismissed on the grounds that the alleged violation of Chapter 21 is legally insufficient.

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitl

A copy of this Order is being forwarded to the Iowa Public Information Board for review at its next scheduled meeting on September 18, 2014.

Sincerely,

Keith Luchtel
Executive Director

Cc: IPIB
Tom Goldensoph, Mayor, City of Low Moor

Board Members

Robert Andeweg • Anthony Gaughan • Jo Martin • Andrew McKean • Gary Mohr • William Monroe
Kathleen Richardson • Suzan Stewart • Peggy Weitzl